

Comparison of New EDGAR Procurement Standards and TEA Purchasing/Procurement Process in FASRG

The purpose of this document is to provide a preliminary comparison of key procurement standards in the new EDGAR regulations to key provisions of TEA's existing purchasing/procurement process that is addressed in the Financial Accountability System Resource Guide.

This document is an unofficial, non-legal version of the EDGAR and FASRG text, created solely for discussion and training purposes by the Division of Grants Administration. A free online, regularly updated, unofficial, non-legal version of CFR documents are available at www.ecfr.gov. An online copy of FASRG is available at http://tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial_Accountability_System_Resource_Guide/.

EDGAR	FASRG	Significant Difference
<p>§200.318 – General procurement standards (a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.</p>	<p>3.1.1 Purchasing Policy (pg 3) The school district objective is to purchase the best products, materials, and services at the lowest practical prices <i>within relevant statutes and policies</i>. Procurement policies must, of course, accommodate the school district's unique operating environment and needs. While school district administrators are not authorized to override state law or board policy, they can customize the purchasing function to provide for regulatory compliance while minimizing procedures and related costs.</p> <p>3.2.1 Purchasing Procedures Manual (pg 8) Overall, a good purchasing manual establishes rules for making school district purchases. It provides guidance to school district employees at the campus and departmental levels in requisitioning purchases and often is used to acquaint vendors and suppliers with the school district's policies and procedures. Internally, the manual helps in training school district personnel in purchasing policy and procedures. Finally, it promotes <i>consistency</i> in purchasing applications throughout the school district. Such a manual can either stand alone or be made a part of a financial and accounting manual.</p>	
<p>§200.318 – General procurement standards (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.</p>	<p>3.1.1 Purchasing Policy (pg 4) Quality assurance and quality control should be reflected in all administrative procedures and extend to areas such as analysis of products provided, review of services and review of vendor performance.</p> <p>3.2.2.5 Vendor Performance Evaluation (pg 19) A system for the evaluation of vendors and their performance is important to support an effective purchasing function.</p>	

<p>§200.318 – General procurement standards</p> <p>(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.</p> <p>(c)(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.</p>	<p>3.1.3 Purchasing Ethics (pg 6)</p> <p>The competitive nature of the public purchasing arena and the expenditure of significant amounts of public funds require that ethical standards be incorporated into the foundation of all purchasing functions. Purchasing personnel and school district staff face the difficult task of developing good vendor relations and encouraging vendor competition while avoiding even the appearance of favoritism or other ethical misconduct.</p> <p>Ethics relating to conflicts of interest, financial interests in firms conducting business with the school district, kickbacks and gratuities, and improper use of a position or confidential information should be clearly communicated throughout the school district.</p> <p>Additionally, school district personnel should be made aware of the penalties for violations of purchasing laws and ethics which may include criminal prosecution and loss of employment opportunities.</p> <p>3.2.2.4 Vendor Gifts and Relations (pgs 14-15)</p> <p>School district officials and employees cannot accept anything of value from a vendor, such as personal gifts or gratuities, which may be construed to have been given to influence the purchasing process. Although such practices may be legitimate and generally accepted in the private sector, giving and receiving gifts in the public sector may constitute a violation of law.</p> <p>It is a good practice for a school district to consult with its attorney and/or other legal counsel at TEA or the Attorney General's Office to develop policies regulating the acceptance of vendor gifts. These policies should not only conform to applicable statutes but should also reflect the district's philosophy regarding regulation of the acceptance of the following from existing or prospective vendors:</p> <ul style="list-style-type: none"> • Meals • Trips • Tickets for entertainment • Gifts of any value <p>Another legal consideration is the disclosure of conflict of interest by board members. If a board member or member of their immediate family has a financial interest in a business entity(s), they are required to disclose this relationship through the execution of an affidavit. Board members should abstain from voting on award of</p>	<p>FASRG goes into greater detail regarding conflict of interest/ethics violations</p>
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	<p>contracts to businesses in which they or their immediate family members have a financial interest.</p> <p>School districts should also be aware of the disclosure requirements regarding federal conflict of interest regulations which prohibit an employee (and members of the employee's immediate family) who is involved in administering, directing or authorizing federally funded transactions from having a financial interest in a vendor associated with federally funded transactions.</p>	
<p>§200.318 – General procurement standards (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach</p>	<p>3.3.3.1 Centralized vs. Decentralized Purchasing (pg 47) A district should strive to maximize the efficiency of its purchasing function. As recommended by TEA, the purchasing function should be centralized within the district for maximum efficiency to be achieved. Centralized and decentralized purchasing is defined by the Council of State Governments publication, <i>State and Local Governmental Purchasing</i>, as follows:</p> <ul style="list-style-type: none"> • <i>Centralized purchasing</i> is defined as “a system of purchasing in which authority, responsibility, and control of activities are concentrated in one administrative unit.” 	<p>FASRG does not appear to address lease vs. purchase analysis</p>
<p>§200.318 – General procurement standards (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.</p>	<p>3.2.3.4 Interlocal Contract (pgs 24-25) A district can contract or agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency, including the Comptroller (formerly the Texas Building and Procurement Commission or General Services Commission) to purchase goods and any services reasonably required for the installation, operation, or maintenance of the goods. The purpose of an interlocal contract may be to study the feasibility of using an interlocal contract to perform a governmental function or service, or to provide a governmental function or service that each party to the contract is authorized to perform individually. Local governments that are parties to an interlocal contract for the performance of a service may, in performing the service, apply the law applicable to a party as agreed by the parties. (Section 791.012, Government Code)</p> <p>3.5.1 Cooperative Purchasing Benefits (pgs 57-58) Cooperative purchasing agreements are popular because they offer some advantages over individual buying (see Interlocal Contracts). Benefits of cooperative purchasing may be realized by districts of all sizes and can include:</p> <ul style="list-style-type: none"> • <i>Cost savings on products or services.</i> A cooperative purchasing arrangement can increase the buying power of a single district with volume discounts. 	<p>FASRG goes into greater detail regarding the process of interlocal contracts</p>

	<ul style="list-style-type: none"> • <i>Savings on administrative costs.</i> A cooperative arrangement can reduce administrative costs relating to performing the purchasing function. Cost savings can include major areas such as salaries and benefits, supplies, office equipment and contracted services. A cooperative can result in the elimination of redundant costs which may be associated with individual districts performing their own purchasing functions. Although purchasing cooperatives may charge annual fees for overhead costs, many districts can realize savings on both products and administration. • <i>Accessibility to more products and services.</i> A cooperative may provide districts the opportunity to buy a greater variety of products and services. The district chooses what is best for its needs at lower costs. 	
<p>§200.318 – General procurement standards (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.</p>	<p>No reference in FASRG to excess or surplus property.</p>	<p>EDGAR refers to using Federal excess and surplus property</p>
<p>§200.318 – General procurement standards (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.</p>	<p>3.2.3.5 Design/Build Contract (pgs 25-26) Design/build is a method of project delivery in which the district contracts with a single entity to take responsibility for both the design and construction of a project. All design (including construction drawings) is done by a single entity, the design/build contractor. The goal of all procurement methods is to provide the best value to the district. Consequently, design/build should be carefully selected and monitored to ensure that the district receives the highest quality products and services at a fair value.</p>	
<p>§200.318 – General procurement standards (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.212 Suspension and debarment.</p>	<p>3.2.2.2 Vendor Award Criteria (pgs 10-11) Texas Education Code 44.031 states that in determining contract awards to vendors, the district shall consider:</p> <ol style="list-style-type: none"> 1) The purchase price 2) The reputation of the vendor and of the vendor's goods and services 3) The quality of the vendor's goods or services 4) The extent to which the goods or services meet the district's needs 5) The vendor's past relationship with the district 6) The impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses 7) The total long-term cost to the district to acquire the vendor's goods or services 8) Any other relevant factor specifically listed in the request for bids or proposals. Factors that a school district may consider under this criteria would include: 	<p>FASRG requires consideration of all 8 criteria</p>

	<ul style="list-style-type: none"> • Vendor response time • Compatibility of goods/products purchased with those already in use in the district 	
<p>§200.318 – General procurement standards (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.</p>	<p>3.1.1 Purchasing Policy (pgs 3-4) Accurate record-keeping and documentation should be a fundamental element of the procurement process. Precise and systematic record-keeping and records management withstands the constant scrutiny of various interest groups including vendors, the general public, and outside agencies as well as internal groups which are the users or customers of the purchasing system. This records management function should support the school district's overall information management plan described in the Data Collection and Reporting module and generally provide for:</p> <ul style="list-style-type: none"> • Both the flow and retention of forms • Full documentation of all competitive procurements • Procurement procurements • Documentation of price quotations 	
<p>§200.318 – General procurement standards (j)(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of: (i) The actual cost of materials; and (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.</p>		FASRG does not appear to address time and materials type contracts
<p>§200.318 – General procurement standards (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is</p>	<p>3.1.1 Purchasing Policy (pg 4) Quality assurance and quality control should be reflected in all administrative procedures and extend to areas such as analysis of products provided, review of services and review of vendor performance.</p> <p>3.1.3 Purchasing Ethics (pgs 6-7) The competitive nature of the public purchasing arena and the expenditure of significant amounts of public funds require that ethical</p>	EDGAR refers to Federal vs. non-Federal responsibility

<p>primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.</p>	<p>standards be incorporated into the foundation of all purchasing functions. Additionally, school district personnel should be made aware of the penalties for violations of purchasing laws and ethics which may include criminal prosecution and loss of employment opportunities.</p>	
<p>§200.319 – Competition. (a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to: (1) Placing unreasonable requirements on firms in order for them to qualify to do business; (2) Requiring unnecessary experience and excessive bonding; (3) Noncompetitive pricing practices between firms or between affiliated companies; (4) Noncompetitive contracts to consultants that are on retainer contracts; (5) Organizational conflicts of interest; (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and (7) Any arbitrary action in the procurement process</p>	<p>3.2.3.1 Competitive Bids (pg 22) Competitive bidding is further defined and the specifications for bid documents and newspaper advertisements as well as other terms and conditions pertinent to the competitive bid process are found in the <i>Handbook on Purchasing for Texas Public Schools, Junior Colleges and Community Colleges</i>, which is included in this module as Appendix 1.</p>	<p>FASRG does not appear to address situations that restrict competition</p>
<p>§200.319 – Competition. (b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.</p>	<p>Handbook (pg 215) If engineering or architectural services are required, they are to be selected on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.</p>	<p>FASRG does not appear to address geographical preferences or state licensing laws</p>
<p>§200.319 – Competition. (c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:</p>	<p>3.2.3.1 Competitive Bids (pg 21) The advertisement for bids, description in the request for bids of item(s), work and/or services and specific terms and conditions must be done in a manner that stimulates competition and obtains the lowest practical price.</p>	<p>EDGAR outlines specific procedures</p>

<p>(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and</p>		
<p>§200.319 – Competition. (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. (d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period. [78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]</p>	<p>3.2.2.1 Vendor List (pg 10) The school district should compile an <i>approved vendor list</i>. This list includes the names and addresses of various vendors and the products and services they offer. Vendors are encouraged to submit their names for inclusion on the list and are asked to complete an application form. Soliciting and including as many vendors as possible results in a complete and functional list of vendors with whom the school district conducts business. The purchasing department maintains the vendor list, analyzing and updating it on a periodic basis. It is distributed to campuses and departments within the school district so that school district employees are aware of the approved vendors.</p>	<p>FASRG does not appear to address adding bidders to the list during the solicitation period</p>
<p>§200.320 – Methods of procurement to be followed. The non-Federal entity must use one of the following methods of procurement. (a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.</p>	<p>3.2.3.7 Price Quotes (pg 27) To obtain the most competitive price, a district at its option <i>may obtain price quotes</i> for items costing <i>less than \$50,000</i>. The district’s purchasing procedures should clearly define the lower figure for which quotes are required and <i>obtain and retain</i> written verification of the prices quoted. Unlike the mandatory competitive procurement described for purchases over \$50,000, if an item costs less than \$50,000, a district may utilize price quotations to stimulate competition and to attempt to receive the most favorable pricing.</p>	<p>EDGAR micro-purchases thresholds are \$3,000. FASRG allows district policy to define a threshold below \$50,000.</p>

<p>§200.320 – Methods of procurement to be followed. (b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.</p>	<p>3.2.3.7 Price Quotes (pg 27) To obtain the most competitive price, a district at its option <i>may obtain price quotes</i> for items costing <i>less than \$50,000</i>. The district's purchasing procedures should clearly define the lower figure for which quotes are required and <i>obtain and retain</i> written verification of the prices quoted. Unlike the mandatory competitive procurement described for purchases over \$50,000, if an item costs less than \$50,000, a district may utilize price quotations to stimulate competition and to attempt to receive the most favorable pricing.</p>	<p>FASRG mandates competitive procurement for purchases over \$50,000</p>
<p>§200.320 – Methods of procurement to be followed. (c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply. (1) In order for sealed bidding to be feasible, the following conditions should be present: (i) A complete, adequate, and realistic specification or purchase description is available; (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price. (2) If sealed bids are used, the following requirements apply: (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publically advertised; (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond; (iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly; (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when</p>	<p>3.2.3.1 Competitive Bids (pgs 20-22) Competitive bidding is a formal process that may also be referred to as competitive sealed bidding, sealed bidding or formal bidding. It is an option available to school districts for the procurement of goods and services. The purpose of competitive bidding is to stimulate competition and obtain the lowest practical price for the work, service and/or item(s) needed. The competitive bidding process requires that bids be evaluated and awards made based solely upon bid specifications, terms and conditions contained in the request for bids document, and according to the bid prices offered by vendors and pertinent factors that may affect contract performance. State law requires that the purchase, lease or lease-purchase of a school bus must be competitively bid when the contract is valued at \$20,000 or more (Texas Education Code §44.031(l)). HB 2411 passed by the 80th Legislature allows for competitive sealed proposals as an alternate procurement method to competitive bidding for bank depository services. The advertisement for bids, description in the request for bids of item(s), work and/or services and specific terms and conditions must be done in a manner that stimulates competition and obtains the lowest practical price. A request for bids contains the following elements: <ul style="list-style-type: none"> • Purchase description or specifications covering the item(s) to be obtained • Work and/or services needed • Terms and conditions for the proposed bid contract • Time and place for opening bids and other provisions The bid process itself should be structured and incorporated into school district purchasing procedures. This process should involve: <ul style="list-style-type: none"> • Development of clear specifications • Advertising for competitive bids • Responding to vendor questions • Procedures for opening and tabulating the bids • Analysis of the bids to ensure compliance with requirements </p>	<p>FASRG is more specific</p>

<p>prior experience indicates that such discounts are usually taken advantage of; and (v) Any or all bids may be rejected if there is a sound documented reason.</p>	<ul style="list-style-type: none"> • Recommending the vendor(s) for bid award • Award of the bid by the board <p>Competitive bidding is further defined and the specifications for bid documents and newspaper advertisements as well as other terms and conditions pertinent to the competitive bid process are found in the <i>Handbook on Purchasing for Texas Public Schools, Junior Colleges and Community Colleges</i>, which is included in this module as Appendix 1. Because competitive bidding is one of the most complicated areas of purchasing, a separate section of this module is devoted to this purchasing method.</p>	
<p>§200.320 – Methods of procurement to be followed. (d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply: (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical; (2) Proposals must be solicited from an adequate number of qualified sources; (3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients; (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and (5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.</p>	<p>3.2.3.2 Competitive Sealed Proposals/Request for Proposals (pg 22) The competitive sealed proposal process is an alternative to competitive bidding. The terms and conditions of competitive sealed proposals are identical to those for competitive bidding except that an important difference between competitive sealed proposals and competitive sealed bidding relates to the finality of initial offers. Changes in the price of goods and services are not negotiable in the competitive bidding process. Competitive proposal procedures are recommended where other procurement procedures are not required according to state or federal rules, laws or regulations, in order to stimulate competitive prices for services.</p> <p>3.4 Competitive Bidding (pgs 54-55) All districts must establish a competitive procurement process that complies with statutory requirements. Knowledge of laws and regulations is an important foundation. Certain processes, however, are essential if competitive bidding is to work effectively in a district:</p> <ul style="list-style-type: none"> • <i>Requirements Planning</i>. A district plans for major purchases to be made during the next twelve months identifying the products or services and when they are needed. The award of bids is scheduled to ensure timely delivery so that operations are not interrupted. From that schedule, a mechanism for coordinating bidding of like or similar items on a district-wide basis is developed. As an example, the requirements planning process identifies the number of copiers to be purchased district-wide, plans for bids to be awarded and delivery made prior to the start of the school year. Requirements planning also enables the district's purchasing official to analyze and plan their workloads. 	<p>FASRG is more specific</p>

	<ul style="list-style-type: none"> • <i>Activities and Responsibilities for Bid Specifications and Bid Award.</i> This process structures the total bid package which includes developing and reviewing specifications, incorporating these specifications into a standard bid form, determining objective bid award criteria, advertising the bid, responding to vendor questions, tabulating/analyzing bid responses, and recommending a vendor for bid award. Establishing time frames and delineating responsibility for each activity is crucial. In accordance with the Texas Education Code, Section 44.035, the district must publish in the request for bids, proposals, or qualifications for construction services the criteria that will be used to evaluate the offerors and relative weights given to the criteria. • <i>Development of an Approved Vendor List.</i> The identification and qualification of vendors for specific products can facilitate the bid process in two ways. First, the district can identify vendors who are interested in doing business with the district and their products and services. Second, the district can monitor the vendor's responses to bids and performance when they are awarded a bid. 	
<p>§200.320 – Methods of procurement to be followed. (f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply: (1) The item is available only from a single source; (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or (4) After solicitation of a number of sources, competition is determined inadequate. [78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014</p>	<p>3.2.3.6 Sole Source (pgs 26-27) Selected purchases may be exempt from competitive procurement if they meet established criteria for a sole source purchase (the item is only available from one source):</p> <ul style="list-style-type: none"> • Identification and confirmation that competition in providing the item or product to be purchased is precluded by the existence of a patent, copyright, secret process or monopoly; • A film, manuscript, or book; • A utility service, including electricity, gas, or water; and • A captive replacement part or component for equipment. <p>Sole source does not apply to mainframe data-processing equipment and peripheral attachments with a single item purchase price in excess of \$15,000. It is incumbent upon the district to obtain and retain documentation from the vendor which clearly delineates the reasons which qualify the purchase to be made on a sole source basis.</p> <p>Handbook (pg 126) 98. How does one document that an item is sole source? As new products are developed, it is possible that a product may be available from a sole source. To document that this is the case, some districts require a letter to confirm these circumstances from the vendor or manufacturer of the product. A statement could be attached to the</p>	<p>FASRG is more detailed in the circumstance of sole source and emergency purchases</p>

	<p>requisition that indicates a sufficient number of vendors have been contacted to determine that only one practical source of supply exists or provides the reasons only one source exists.</p> <p>3.2.5.7 Emergency Purchases (pg 34-35, Entire Section) Two types of emergency purchases are made in districts. One type results from an eminent threat to the health, safety, or welfare of students. Such purchases must comply with state law and may be made only after a formal board action declaring an emergency and authorizing the purchase. An example of an emergency purchase of this type is the authorization to repair a school after a fire or a natural disaster. Emergency purchases exceeding the dollar amount triggering competitive procurement requirements shall be made in conformance with subsection (h) Section 44.031 Texas Education Code. The second type of emergency purchase usually is defined by local policy to provide for the acquisition of goods or services to meet an immediate need such as purchases to repair damage to a facility which may imperil students or the security of the facility. For example, if windows are broken at a school by vandals, an immediate need exists to not only secure the building, but also to protect the contents from damage by the elements. This type of emergency purchase is normally utilized after regular business hours or on weekends and holidays. After purchases of this type are made, a purchase order should be issued after the fact on the next business day. Care should be taken that emergency purchases do not result from improper planning rather than from a true emergency. It is important that the district attempts to eliminate emergency purchases for nonemergency situations as much as possible and requires that all emergency purchases be fully justified.</p>	
<p>§200.321- Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms. (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. (b) Affirmative steps must include: (1) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;</p>	<p>3.2.2.2 Vendor Award Criteria (pgs 10-11) Texas Education Code 44.031 states that in determining contract awards to vendors, the district shall consider: 6) The impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses</p>	<p>EDGAR is more specific in its requirements regarding underutilized businesses</p>

<p>(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.</p>		
<p>§200.323 Contract cost and price. (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals. (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles. (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.</p>		<p>FASRG does not appear to address cost and price analysis</p>
<p>§200.324 Federal awarding agency or pass-through entity review. (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being</p>	<p>3.1 Purchasing Overview (pg 2) The <i>consistent oversight by interest groups</i>. School district purchasing is scrutinized by diverse groups including those from the public, the media, state and federal agencies, and auditors. Strict adherence to established guidelines and consistency in record keeping, documentation, and execution of procedures assists the school district in withstanding this scrutiny.</p>	<p>EDGAR is more specific</p>

proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
- (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

<p>§200.325 Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:</p> <p>(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.</p> <p>(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.</p> <p>(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.</p>	<p>Handbook (pg 143) 17. At what threshold must districts require payment and performance bonds? Payment bonds are required on construction projects costing \$25,000 or more. Performance bonds are required on construction projects costing \$100,000 or more. Payment and performance bonds are required on an energy savings performance contract. (TEC 44.901) However, districts are not prohibited from requiring payment and performance bonds for projects costing below these threshold amounts. Construction contracts over \$100,000 must have bonding from surety companies which are Treasury listed. Payment and performance bonds are to be returned to the unsuccessful vendors as soon as possible after the contract award.</p>	<p>EDGAR outlines bonding requirements.</p>
<p>§200.326 Contract provisions. The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.</p>	<p>Purchasing Module, Update 14</p>	<p>EDGAR Appendix II appears to be more specific than Module Update 14</p>